

§ 58.35

28 CFR Ch. I (7–1–13 Edition)

shall be published in the FEDERAL REGISTER.

(b)(1) A provider shall waive the fee in whole or in part whenever a debtor demonstrates a lack of ability to pay the fee.

(i) A debtor presumptively lacks the ability to pay the fee if the debtor's household current income is less than 150 percent of the poverty guidelines updated periodically in the FEDERAL REGISTER by the U.S. Department of Health and Human Services under the authority of 42 U.S.C. 9902(2), as adjusted from time to time, for a household or family of the size involved in the fee determination.

(ii) The presumption shall be rebutted, and the provider may charge the debtor a reduced fee, if the provider determines, based on income information the debtor submits to the provider, that the debtor is able to pay the fee in a reduced amount. Nothing in this subsection requires an provider to charge a fee to debtors whose household income exceeds the amount set forth in paragraph (b)(1)(i) of this section, or who are able to demonstrate ability to pay based on income as described in this subsection.

(iii) A provider shall disclose its fee policy, including the criteria on which it relies in determining a debtor's eligibility for reduced fees, and the provider's policy for collecting fees pursuant to paragraph (b)(1)(ii) of this section, in accordance with § 58.33(k)(2).

(2) The United States Trustee shall review the basis for the mandatory fee waiver policy set forth in paragraph (b)(1) of this section one year after the effective date of this part and then periodically, but not less frequently than every four years, to determine the impact of that fee waiver policy on debtors and providers. Any revisions to the mandatory fee waiver policy set forth in paragraph (b)(1) of this section shall be published in the FEDERAL REGISTER.

(c) Notwithstanding the requirements of paragraph (b) of this section, a provider also may waive fees based upon other considerations, including, but not limited to:

(1) The debtor's net worth;

(2) The percentage of the debtor's income from government assistance programs;

(3) Whether the debtor is receiving pro bono legal services in connection with a bankruptcy case; or

(4) If the combined current monthly income, as defined in 11 U.S.C. 101(10A), of the debtor and his or her spouse, when multiplied times twelve, is equal to or less than the amounts set forth in 11 U.S.C. 707(b)(7).

(d) A provider shall not require a debtor to purchase an instructional course in connection with the purchase of any other service offered by the provider.

(e) A provider who is also a chapter 13 standing trustee may only provide the instructional course to debtors in cases in which the trustee is appointed to serve and may not charge any fee to those debtors for the instructional course. A standing chapter 13 trustee may not require debtors in cases administered by the trustee to obtain the instructional course from the trustee. Employees and affiliates of the standing trustee are also bound by the restrictions in this section.

[78 FR 16172, Mar. 14, 2013]

§ 58.35 Minimum requirements to become and remain approved providers relating to certificates.

(a) An approved provider shall send a certificate only to the debtor who took and completed the instructional course, except that an approved provider shall instead send a certificate to the attorney of a debtor who took and completed an instructional course if the debtor specifically directs the provider to do so. In lieu of sending a certificate to the debtor or the debtor's attorney, an approved provider may notify the appropriate bankruptcy court in accordance with the Federal Rules of Bankruptcy Procedure that a debtor has completed the instructional course.

(b) An approved provider shall send a certificate to a debtor, or notify the appropriate bankruptcy court in accordance with the Federal Rules of Bankruptcy Procedure, that a debtor has completed the instructional course no later than three business days after the debtor completed an instructional course and after completion of a debtor course evaluation form that evaluates the effectiveness of the instructional

course. The approved provider shall not withhold the issuance of a certificate or notice of course completion to the appropriate bankruptcy court because of a debtor's failure to submit an evaluation form, though the provider should make reasonable effort to ensure that debtors complete and submit course evaluation forms.

(c) If a debtor has completed instruction, a provider may not withhold certificate issuance or notice of course completion to the appropriate bankruptcy court for any reason, including, without limitation, a debtor's failure to obtain a passing grade on a quiz, examination, or test. A provider may not consider instructional services incomplete based solely on the debtor's failure to pay the fee. Although a test may be incorporated into the curriculum to evaluate the effectiveness of the course and to ensure that the course has been completed, the approved provider cannot deny a certificate to a debtor or notice of course completion to the appropriate bankruptcy court if the debtor has completed the course as designed.

(d) An approved provider shall issue certificates only in the form approved by the United States Trustee, and shall generate the form using the Certificate Generating System maintained by the United States Trustee, except under exigent circumstances with notice to the United States Trustee.

(e) An approved provider shall have sufficient computer capabilities to issue certificates from the United States Trustee's Certificate Generating System.

(f) An approved provider shall issue a certificate, or provide notice of course completion to the appropriate bankruptcy court in accordance with the Federal Rules of Bankruptcy Procedure, with respect to each debtor who completes an instructional course. Spouses receiving an instructional course jointly shall each receive a certificate or notice of course completion to the appropriate bankruptcy court shall be made for both individuals.

(g) An approved provider shall issue a replacement certificate to a debtor who requests one.

(h) Only an authorized officer, supervisor or employee of an approved pro-

vider shall issue a certificate, or provide notice of course completion to the appropriate bankruptcy court, and an approved provider shall not transfer or delegate authority to issue a certificate or provide notice of course completion to any other entity.

(i) An approved provider shall implement internal controls sufficient to prevent unauthorized issuance of certificates.

(j) An approved provider shall ensure the signature affixed to a certificate is that of an officer, supervisor or employee authorized to issue the certificate, in accordance with paragraph (h) of this section, which signature shall be either:

(1) An original signature; or

(2) In a format approved for electronic filing with the court (most typically in the form /s/ name of instructor).

(k) An approved provider shall affix to the certificate the exact name under which the approved provider is incorporated or organized.

(l) An approved provider shall identify on the certificate:

(1) The specific federal judicial district requested by the debtor;

(2) Whether an instructional course was provided in person, by telephone or via the Internet;

(3) The date and time (including the time zone) when instructional services were completed by the debtor; and

(4) The name of the instructor that provided the instructional course.

(m) An approved provider shall affix the debtor's full, accurate name to the certificate. If the instructional course is obtained by a debtor through a duly authorized representative, the certificate shall also set forth the name of the legal representative and legal capacity of that representative.

[78 FR 16172, Mar. 14, 2013]

§ 58.36 Procedures for obtaining final provider action on United States Trustee's decisions to deny providers' applications and to remove approved providers from the approved list.

(a) The United States Trustee shall remove an approved provider from the approved list whenever an approved